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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 571 Misc.

RUDOLF WORBETZ,
Petitioner,

v.

THE STATE OF NEW JERSEY,
Respondent.

ON APPLICATION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

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I.

Reference to Official Reports of Opinions Delivered in the Court Below.*

The opinion of the Supreme Court of New Jersey, the Court immediately below, which examined the judgments of the Superior Court of New Jersey, Appellate Division, and the County Court of Somerset County, New Jersey, is officially reported at 17 N. J. 569, 112 A. (2nd) 246.

The opinions of the Superior Court of New Jersey and the County Court of Somerset County, New Jersey, are unreported.

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* Unless otherwise plainly indicated by the context, numbers in parentheses throughout this brief, refer to the pages of the typewritten and printed records of the Court below, defendant's appendix and State's appendix as it was submitted to the Supreme Court of New Jersey. A copy of the appendices filed by all parties below, duly certified by the Clerk of the Supreme Court of New Jersey, has been filed with the Clerk of this Court. It is to be noted that the title of the cause before the Court below announced the State of New Jersey as plaintiff-respondent v. Rudolf Worbetz, defendant-appellant.

II.

Counter-statement Concerning Jurisdiction.

The petitioner does not state under what authority the jurisdiction of this Court is invoked.

It is believed that petitioner seeks to invoke the jurisdiction of this Court under 28 U. S. C., sec. 1257 (3).

We respectfully submit that the decisions of the Supreme Court of New Jersey in this case involving the questions presented in the petition are in conformity with the provisions of the Federal Constitution(1) respecting due process and equal protection of the laws as guaranteed by the United States Constitution, and that the said Court did not decide any constitutional question of substance in a manner contrary to the decisions of this Court.

We, therefore, respectfully submit that this Court should not entertain jurisdiction and issue a writ of certiorari to review the decision of the Court below.

III.

Counter-statement of the Case.

The petitioner, Rudolf Worbetz, on December 23, 1947, upon waiving indictment and trial by jury (P1a, et seq., P3a, et seq., P4a, et seq.), and having pleaded guilty, was sentenced by the Somerset County Court of Special Sessions under three allegations, namely, allegation No. 3576, charging armed robbery and habitual criminal (P6a, et

(1) Constitution of the United States, Amendments VI and XIV, Section 1.

seq.), allegation No. 3576A, charging armed robbery and habitual criminal (P9a, et seq.), and allegation No. 3576B, charging armed robbery and habitual criminal (P12a, et seq.), as follows: Upon allegations Nos. 3576, 3576A and 3576B, to a term of life imprisonment in each case (P15a, P17a, P18a), all in the New Jersey State Prison. The trial court specified that the sentences imposed, upon allegations Nos. 3576A and 3576B, to run concurrently with each other and with that imposed under allegation No. 3576 (P15a, P17a, P18a). Pursuant to said sentences, the petitioner was committed to the State Prison, at Trenton, where he has since remained.

On November 16, 1953, Worbetz petitioned the Superior Court of New Jersey, Law Division, Somerset County, for a writ of *habeas corpus* (P19a-P25a), in an effort to be relieved from imprisonment, alleging that his confinement for life was for his conviction of the offense of robbery, and illegal in that counsel was not assigned, he did not waive his right to counsel, he was not aware of the right to representation by counsel, and, finally, he was never informed nor advised of his right to be represented by counsel (P19a). Thereafter, the Assignment Judge of the Superior Court of New Jersey for Somerset County referred the petition to the Somerset County Court for consideration.

On December 1, 1953, the County Court rendered its opinion, deciding the petition was insufficient on its face (P26a). On December 4, 1953, its order was entered dismissing the petition (P27a).

On December 7, 1953, the petitioner appealed to the Superior Court, Appellate Division, from the judgment of the

County Court (P27a). On February 25, 1954, the Appellate Division decided the petition did not disclose facts to warrant a supposition that his pleas of guilty were so unjustly made or accepted as to render the resulting sentence void and it unanimously affirmed the judgment of the County Court (D1a).

On March 5, 1954, the petitioner served upon the County Prosecutor, in and for the County of Somerset, a notice of appeal, to the Supreme Court of New Jersey, from the judgment of the Appellate Division of the Superior Court (P28a).

On March 14, 1955, the Supreme Court of New Jersey, in a *per curiam* opinion, affirmed the judgment of the Superior Court of New Jersey, Appellate Division, for the reasons expressed in that opinion (a copy of the opinion is annexed to the petition filed in this Court by the petitioner.)

IV.

Summary of the Argument.

We respectfully submit:

There was no violation of due process in the acceptance of petitioner's guilty pleas in 1947.

a. There was no denial of counsel when defendant entered his guilty pleas in 1947.

b. The Supreme Court of New Jersey did not decide any Federal Constitutional question of substance in a manner contrary to the decisions of this Court.

V.

Argument.

On the question of the alleged denial of counsel, the petitioner says in his petition that he has been illegally deprived of his liberty, guaranteed by the Constitution of the State of New Jersey (Article 1, par. 10: assistance of counsel in his defense), by the Statute of the State of New Jersey (Revised Statutes of New Jersey 2:190-3), and by the Sixth Amendment to the Federal Constitution (petition, p. 5, par. 1); and that he was denied his constitutional rights guaranteed by the Sixth and Fourteenth Amendments to the Federal Constitution, whereby he has been deprived of his liberty without due process of law (petition, p. 5, par. 1).

The petitioner makes no assertion in his petition nor does it appear in the record, that he requested counsel and there was a denial of his request. He urges that the acceptance of his pleas of guilty without prior assignment of counsel, or affirmative advice of the right thereto, deprived him of his constitutional rights under the Fourteenth Amendment. This Court has held that a State conviction in a non-capital case is not invalidated under the Fourteenth Amendment by a showing, without more, that it was entered pursuant to a plea of guilty made without counsel or affirmative advice of the right thereto, *Bute* v. *Illinois*, 333 U. S. 640, 68 S. Ct. 763, 92 L. Ed. 986 (1948); *Foster* v. *Illinois*, 332 U. S. 134, 67 S. Ct. 1716, 91 L. Ed. 1955 (1947).

The State decisions in New Jersey, in effect at the time of the petitioner's convictions, imposed no requirement

that he be affirmatively advised of his right to counsel. See *State* v. *Cynkowski*, 10 N. J. 571, 579 (1952); *State* v. *Murphy*, 87 N. J. L. 515 (E. & A., 1915); *State* v. *Raney*, 63 N. J. L. 363, 365 (S. Ct., 1899). The new practice rules of New Jersey, adopted in 1948, do embody an expressed provision requiring the Court to advise a defendant who appears in court without counsel of his right to counsel, and to assign counsel to represent him at the trial, unless he elects to proceed without counsel or is able to obtain counsel. *R. R. 1:12-9(a)*.[1] This provision, it has been held, had no retroactive effect (Cf. *Norris* v. *United States*, 190 F. 2d. 186, 188 (C. C. A. 5, 1951)), and has no pertinency to the convictions in the instant matter, entered in 1947.

The petitioner cites several cases in an effort to support his position. However, a careful analysis of those cases reveals that they are not pertinent in that in each there is found an essential difference in the facts from those in the instant case. This may best be explained by considering two of the cited cases, namely *State* v. *Ballard*, 15 N. J. Super. 417 (App. Div., 1951), *affirmed per curiam*, 9 N. J. 402 (1952) (petition p. 8, par. 1), and *Powell* v. *Alabama*, 287 U. S. 45, 53, S. Ct. 55, 77 L. Ed. 158 (1932); (petition p. 5, par. 1).

In the *Ballard* case, the defendant's petition alleged that at the time of his conviction he was 18 years of age and ignorant of his rights, had been refused permission to make arrangements for counsel, had signed a waiver under misapprehension, and had been wrongfully advised that his

(1) R. R. 1:12-9. Assignment of Counsel for Indigent Persons Charged with Crime.

(a) Where a person charged with crime appears in any court, without counsel, the court shall advise him of his right to counsel and assign counsel to represent him at the trial unless he elects to proceed without counsel or is able to obtain counsel.

waiver implied an admission of the charge requiring that he plead guilty. The Court, there, accepted the view that, convictions for a serious crime, involving imprisonment up to 15 years, pursuant to pleas of guilty entered without counsel under the described circumstances, if true, would be so unfair and shocking to a sense of justice as to violate the due process clause of the Fourteenth Amendment. Accordingly it directed a hearing under the particular facts there presented.

The *Powell* case, was one involving a charge of rape, carrying death sentence. Therein we find a clear violation of the constitutional right to assistance of counsel, such conclusion being inevitable because of the defendant's youth, ignorance and illiteracy together with presence of a hostile public sentiment, failure to allow a reasonable time and opportunity to secure counsel and close surveillance of defendants by military forces.

In the instant case, the petitioner has not brought himself within the holding in the *Ballard* and *Powell* cases, *supra*, or the other cases he cites. Nowhere did he assert facts which would indicate that his pleas of guilty in 1947 were obtained unfairly in violation of the Fourteenth Amendment of the Federal Constitution, or any provisions of either the Federal Constitution or State Constitution. In this connection, the opinion of the Court below is most illuminative, 17 N. J. 569, 671 (petition 4a):

> "It is interesting to notice that between October 4, 1940 and May 4, 1944 this defendant had been convicted of seven high misdemeanors to which by the pleas here involved his number of convictions of crime reaches ten. Obviously he was no stranger at the bar of justice. Moreover he does not now deny his guilt of the commission of the crimes to which he entered the pleas. Indeed, nothing is dis-